

Remarks

A Restriction/Election Requirement was mailed by the Office on September 28, 2005, which restricted originally presented claims 1-20 between Group I (apparatus claims 1-15) and Group II (method claims 16-20).

The Applicant filed a Response on October 28, 2005 which provided amendments to claims 1-19, cancelled claim 20 without prejudice, added new claims 21-25, elected with traverse the invention of Group I with claims 1-11 and 21-25 readable thereon, and identified claim 21 as a linking claim to Groups I and II.

A Notice of Non-Compliant Amendment was mailed November 1, 2005 which withdrew the elected claims 1-11 and 21-25. This is respectfully traversed as set forth below.

For clarity, the Applicant has hereinabove resubmitted the same claim amendments as provided in the Applicant's previous Response filed October 28, 2005.

Basis for Alleged Non-Compliance of Response

As best as can be understood, the Examiner views the amendments to claims 1-11 and 21-25 as transforming these into Group II claims; for example, in support of the non-compliance determination the Examiner stated, "*New claim 21 and amended claims 1 and 11 are now also included method claimed [sic] which refer to previously claimed [sic] of claim 16.*" (Notice, page 2, lines 5-8).

While the Applicant traverses this conclusion, the Applicant nevertheless agrees that the claim amendments eliminated the requirement for a restriction/election requirement. See e.g., Response filed 10/28/05, page 10, lines 4-7. Accordingly, in view of the foregoing

statement by the Examiner, and the apparent maintained election requirement, the Applicant now hereby elects with traverse the invention of Group II, with claims 1-19 and 21-25 readable thereon.

Additionally, the Applicant reaffirms that claim 21 is a linking claim that links the respective subject matter of apparatus claims 1-15 and method claims 16-20.

It is the Applicant's position that the Examiner was required by Office rules to remove the restriction/election requirement entirely in response to the Applicant's amendments instead of withdrawing all pending claims from the case and declaring non-compliance. MPEP 821.01; 821.04(a). Moreover, it was clear error to withdraw linking claim 21 from the previous election because Applicant is entitled, as a matter of right, to consideration of a linking claim irrespective of the elected group. MPEP 809.03. Finally, no action had in fact been received on the merits, so the Examiner's justification of withdrawing all claims 1-11 and 21-25 on this basis was also clear error. MPEP 810.

Nevertheless, in view of the above election it is believed that all non-compliant issues have been addressed and the case is ready for substantive examination on the merits of all pending claims 1-19 and 21-25. The Applicant retains the right to petition or take other available actions should this issue remain unresolved after consideration of this response.

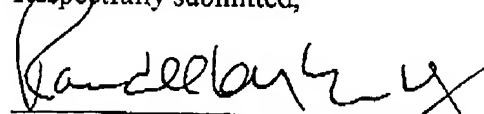
Conclusion

This is intended to be a complete response to the Notice of Non-Compliant Amendment mailed November 1, 2005. The Applicant respectfully requests examination and allowance of all of the claims pending in the application.

The Examiner is invited to contact the below signed Attorney should any questions arise concerning this response.

Respectfully submitted,

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